

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD CHAROWSKY,	:	
Plaintiff	:	
	:	
VS.	:	NO. 95-CV-4481
	:	
DAVID WAPINSKY,	:	
AND	:	
TODD SETLOCK,	:	
Defendants	:	

MEMORANDUM AND ORDER

Background

Before the court is plaintiff's motion for leave to file an amended complaint. Plaintiff, Richard Charowsky, is currently an inmate at Schuylkill County Prison. He filed the present action, pro se, on July 24, 1995. His original pleading consisted of a form, provided to him by the prison, to be used by prisoners for filing claims pursuant to 42 U.S.C. § 1983. This court subsequently gave plaintiff leave to pursue his claim in forma pauperis. On April 15, 1996, plaintiff was appointed counsel. Counsel then filed the instant motion on June 20, 1997.

Plaintiff's claim arises out of an incident that occurred on June 27, 1995. Plaintiff was required by the defendants, who are prison personnel, to clean human feces from a cell that had been "bombed" by another inmate. Plaintiff was allegedly denied protective gear by the defendants after having requested it.

Discussion

Rule 15(a) of the Federal Rules of Civil Procedure states that leave to amend a complaint "shall be freely given when justice so requires." A request to amend a complaint should be granted so long as the non-moving party is not unduly prejudiced. Cornell v. Occupational Safety and Health Review Commission, 573 F.2d 820 (3d Cir. 1978).

The Supreme Court has set forth reasons for which a motion to file an amended complaint may be denied. Foman v. Davis, 371 U.S. 178 (1962). The reasons include the avoidance of undue delay, resulting undue prejudice to the non-moving party, as well as reasons of bad faith and the futility of the proposed amendment. Id., at 182.

In the instant case, by granting plaintiff's motion, the court sees no circumstances that would cause an undue burden to the non-moving party. Plaintiff's amended complaint arises out of the same set of circumstances as the original complaint. Plaintiff's motion is timely filed, and plaintiff does not seek to add or replace any defendants. The amended complaint is essentially a clarification of the first, written and filed by plaintiff's appointed counsel.¹ In a similar case, in which an incarcerated plaintiff filed his complaint pro se, but after the period of discovery had expired was able to retain counsel, this circuit determined that it was an

¹ The only substantive difference between plaintiff's original and amended complaint is that plaintiff's amended complaint consists of an additional count of negligent supervision pursuant to state tort law.

abuse of discretion for the district court to deny plaintiff's motion to amend the original complaint. See Jones v. Jones and Laughlin Steel, 750 F.2d 1215 (3d Cir. 1984).

An appropriate order follows.

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O R D E R

AND NOW, to wit, this day of , 1997,
upon consideration of Plaintiff's Motion for Leave of Court to
Amend Plaintiff's Complaint to more specifically and clearly state
the plaintiff's cause of action pursuant to 42 U.S.C. § 1983 and to
add claims pursuant to state tort law, filed with the Clerk on June
20, 1997, it is hereby ORDERED that said motion is GRANTED.

It is so ORDERED.

BY THE COURT:

CHARLES B. SMITH
UNITED STATES MAGISTRATE JUDGE